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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**IN RE: BRCA1- AND BRCA2-BASED
HEREDITARY CANCER TEST PATENT
LITIGATION**

**PRETRIAL ORDER NO. 2 —
SCHEDULING ORDER**

Case No. 2:14-md-02510-RJS

Judge Robert J. Shelby

Magistrate Judge Dustin B. Pead

The following Scheduling Order is submitted pursuant to the Court's instruction at the April 25, 2014 Scheduling Conference, and pursuant to Fed. R. Civ P. 16(b) and L.P.R. 1.2. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause. While certain of the consolidated cases are declaratory judgment cases, the term "Plaintiffs" as used herein refers to the BRCA and MUTYH patent owners and

licensees, namely, University of Utah Research Foundation, the Trustees of the University of Pennsylvania, HSC Research and Development Limited Partnership, Endorecherche, Inc., and Myriad Genetics, Inc., and the term “Defendants” as used herein refers to those challenging the validity of the BRCA and MUTYH patents and/or alleging that they do not infringe those patents, namely, Ambry Genetics Corporation, GeneDx, Inc., Quest Diagnostics, Inc., Quest Diagnostics Nichols Institute, Counsyl, Inc., Invitae Corporation, and Laboratory Corporation of America Holdings.

1.		DISCOVERY LIMITATIONS¹	
	a.	Maximum Number of Deposition Hours by Plaintiffs (Including 30(b)(6) depositions; excluding expert depositions)	240 hours total (not to exceed 50 hours per any individual defendant group)
	b.	Maximum Number of Deposition Hours by Defendants (Including 30(b)(6) depositions; excluding expert depositions)	360 hours total

¹ Any discovery disputes shall be handled in accordance with the procedure set forth in the Short Form Discovery Motion Procedure, attached as Exh. A hereto. All submissions made to the Court under the Short Form Discovery Motion Procedure shall be filed before both Judge Robert J. Shelby and Magistrate Judge Dustin B. Pead.

c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<p>No more than 7 hours for individuals, except for experts and inventors.²</p> <p>Plaintiffs will designate in their initial disclosures no more than 10 inventors they intend to call as witnesses at trial. The list may be amended or added to by Plaintiffs for good cause shown or by agreement in writing.</p> <p>Inventors may be deposed for no more than 14 hours each, with no more than 7 hours in any one day. Inventor depositions must be conducted in a single, up to two-day, sitting.</p>
d.	Maximum Number of Interrogatories	150 total for Plaintiffs, 150 total for Defendants
e.	Maximum Number of Requests for Admission (Excluding requests relating to authenticity of documents)	150 total for Plaintiffs, 150 total for Defendants

² As agreed during the April 25, 2014 Case Management Conference, the parties shall meet and confer (or, as may be appropriate, seek relief) regarding the maximum number of hours for expert depositions and Rule 30(b)(6) depositions.

	<p>f. The parties are negotiating an ESI agreement for submission to the Court.</p> <p>Regarding a modified Protective Order: As stated in page 16 of the parties' joint report (Dkt. 40), the parties agreed to modifications of the standard Protective Order, and they are continuing to work towards the goal of preparing and filing a unified motion for a further modified Protective Order for entry in this case that adequately protects their various interests. It is possible, however, that more than one motion for a modified Protective Order will be necessary should insurmountable differences prevent a joint submission. Until such time as the case-specific protective order is entered, the form Standard Protective Order will be deemed to be in full force and effect. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of privileged or work product protected ESI is not a waiver in the pending case or in any other federal or state proceeding.</p>	
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	g.	<p>Claim of privilege or protection as trial preparation material asserted after production shall be handled as follows:</p> <p>Regarding a modified Protective Order: As stated in page 16 of the parties' joint report (Dkt. 40), the parties agreed to modifications of the standard Protective Order, and they are continuing to work towards the goal of preparing and filing a unified motion for a further modified Protective Order for entry in this case that adequately protects their various interests. It is possible, however, that more than one motion for a modified Protective Order will be necessary should insurmountable differences prevent a joint submission. Until that time, the form Standard Protective Order will be deemed to be in full force and effect. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of privileged or work product protected information is not a waiver in the pending case or in any other federal or state proceeding. The parties intend to address in the Protective Order the issue the Court raised regarding the use, in one case, of discovery obtained in another case. Any party may rely upon an objection lodged by another party who is represented at a deposition. For example, once an objection is raised to the form of a question, other parties need not repeat the objection to preserve the objection for trial.</p>	
2.		INITIAL DISCLOSURES	DATE
	a.	Plaintiffs' disclosure of accused instrumentalities	05/02/2014
	b.	Plaintiffs' Rule 26(a)(1) initial disclosures and production	05/16/2014
	c.	Defendants' Rule 26(a)(1) initial disclosures and production	05/23/2014
3.		INITIAL AND FINAL CONTENTIONS	DATE
	a.	Initial Infringement Contentions	06/04/2014
	b.	Initial Non-Infringement, Unenforceability and Invalidity Contentions	07/02/2014
	c.	Final Infringement Contentions	10/29/2014

	d.	Final Unenforceability, and Invalidity Contentions	11/12/2014
	e.	Final Non-Infringement Contentions	11/26/2014
4.		AMENDMENT OF PLEADINGS/ADDING PARTIES	DATE
	a.	Last Day to File Motion to Amend Pleadings	07/01/2014
	b.	Last Day to File Motion to Add Parties	07/01/2014
5.		CLAIM CONSTRUCTION	DATE
	a.	Exchange of Proposed Claim Terms To Be Construed Along with Proposed Constructions	12/10/2014
	b.	Confer and agree upon no more than twenty (20) terms or phrases for the BRCA patents and no more than ten (10) terms or phrases for the MUTYH patents to submit for construction by the court.	12/17/2014
	c.	Cross-Motions for Claim Construction and Deadline to file dispositive motions required to be filed with claim construction	01/14/2015
	d.	Responsive Claim Construction Briefs and Deadline to file oppositions to dispositive motions filed with claim construction	02/11/2015 ³
	e.	Joint Claim Construction Chart and Joint Status Report	02/18/2015
	f.	Deadline to file reply in support of dispositive motions required to be filed with claim construction	02/25/2015
	g.	Exchange Exhibits for Claim Construction Hearing	No later than 7 days before the claim construction hearing
	h.	Claim Construction Hearing and Tutorial (if requested)	TBD

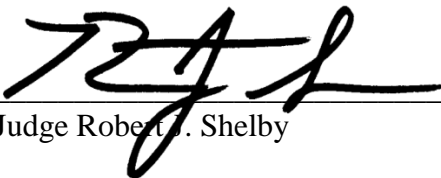
³ Pursuant to LPR 4.2(a), if a party offers a sworn declaration of a witness to support its claim construction, the party must promptly make the witness available for deposition.

6.		POST CLAIM CONSTRUCTION DISCLOSURES AND DEADLINES	DATE
	a.	Disclosure concerning opinions of counsel	7 days after claim construction ruling
	b.	Post-claim construction deadline to file a proposed scheduling order governing the remaining pretrial obligations	14 days after claim construction ruling
	c.	Evaluate case for Settlement/ADR	14 days after the claim construction ruling
7.		CLOSE OF FACT DISCOVERY	02/06/2015
8.		RULE 26(a)(2) REPORTS FROM EXPERTS	DATE
	a.	Party with burden of proof on issue	28 days after claim construction ruling
	b.	Rebuttal expert reports	28 days after initial burden of proof expert reports
	c.	Close of expert discovery	35 days after exchange of rebuttal expert reports
9.		OTHER DEADLINES	DATE
	a.	Deadline for filing dispositive or potentially dispositive motions	TBD
	b.	Pretrial matters, including scheduling for Daubert motions and motions in limine	Addressed by the applicable court (<i>i.e.</i> , this Court or the remand court) after discovery closes.
10.		SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION/ OTHER PROCEEDINGS	
	a.	Referral to Court-Annexed Mediation	No
	b.	Referral to Court-Annexed Arbitration	No
	c.	Settlement probability	Low

The Court further orders that the parties submit a Joint Status Report to both Judge Robert J. Shelby and Magistrate Judge Dustin B. Pead every 45 days, with the first such report due on June 9, 2014. That report shall contain: (1) a summary of events that have occurred since the prior status report; (2) a summary of events that have been scheduled; (3) a status update regarding discovery; (4) a list of motions that have been filed and are pending before the Court, including status and schedule of briefing; and (5) at the option of the parties, a request, with an agenda, for a status conference.

SO ORDERED this 9th day of May, 2014.

BY THE COURT:



Judge Robert J. Shelby

Exhibit A

Short Form Discovery Motion Procedure

If a discovery dispute arises in this case, the parties must follow this procedure, in the sequence listed.

- (1) The parties must make reasonable efforts to resolve the dispute without court assistance. At a minimum, those efforts must include a prompt written communication sent to the opposing party:
 - (a) identifying the discovery disclosure/request(s) at issue, the response(s) thereto, and specifying why those responses/objections are inadequate, and
 - (b) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so.
- (2) If the parties cannot resolve the dispute and they wish to have the court assist in resolving the matter, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.
- (3) The Short Form Discovery Motion must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters and recite the date, time, and place of such consultation and the names of all participating parties or attorneys. The filing party should include a copy of the offending discovery request/response (if it exists) as an exhibit to the Short Form Motion. Each party should also e-mail chambers a proposed order setting forth the relief requested in a word processing format.
- (4) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)

The screenshot shows the 'Motions' screen in CM/ECF. It features a search bar at the top with the text 'Start typing to find another event.' Below this are two columns: 'Available Events (click to select events)' and 'Selected Events (click to remove events)'. The 'Available Events' list includes: Disqualify Counsel, Disqualify Judge, Disqualify Juror, Enforce, Enforce IRS Summons, Enforce Judgment, Entry of Default, Entry of Judgment, Exclude, Extension of Time, Extension of Time re Transcript, Extension of Time to Amend, Extension of Time to Complete Discovery, and Extension of Time to File Answer. The 'Selected Events' list contains 'Disqualify Judge' and 'Expedite'. At the bottom of the 'Available Events' list are 'Next' and 'Clear' buttons.

- (5) To resolve the dispute the court may
 - (a) decide the issue on the basis of the Short Form Discovery Motion consistent with DUCivR 7-1(f);
 - (b) set a hearing, telephonic or otherwise, upon receipt of the Motion without waiting for any Opposition; and/or
 - (c) request further briefing and set a briefing schedule.
- (6) If the court sets a hearing prior to receipt of any opposition, the opposing party must file its response no later than 4:00 p.m. the day before the hearing if it wishes the Court to consider it, unless otherwise ordered.
- (7) If disputes arise during a deposition that can most efficiently be resolved by contacting the Court by phone, the parties shall call the assigned judge and not wait to file a Short Form Discovery Motion.